

NEWTON FAIR HOUSING COMMITTEE

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REVIEWING PROJECT CONSIDERATION OF CITY FAIR HOUSING GOALS

September 21, 2016; revised 5/13/2019

The City of Newton agreed with HUD in 2015 to “...review all applicable projects for their inclusion of fair housing goals and note in writing in all applicable project reviews a statement that ‘the objectives of the City’s *Consolidated Plan*, including fair housing, have been considered in this review’” as a part of the Engine 6 Conciliation Agreement¹. That charge complements the usual review by City staff in that it is asking for review that focuses on goals and policies that are documented in a plan and asks about the consideration of those goals and policies, not necessarily consistency with them.

The City has a well-structured process for reviewing project proposals at the various stages in moving from conceptual early sketches to highly detailed construction documents, with a good record in timely reviews and inspections. However, there is less structure and documentation at early stages regarding objective consistency with considerations that are documented not in regulations but rather in less-familiar documents which bear on fair housing, including the *Newton Consolidated Plan* and other documents that are cited in it, so are within the scope of the agreed reviewing, these in particular:

- *Newton FY11-15 Analysis of Impediments to Fair Housing Choice*, in its sixth year;
- *Newton’s Fair Housing Action Plan*, drafted in 2008, and the
- *Newton Comprehensive Plan*, now nearing 10 years old.

No developer could be expected to study those many hundreds of pages of relevant guidance in deciding project location, design, and operation by seeking beyond rules for consistency with those documents. However, after careful review seven ways stand out through which developers might go beyond regulation to serve the City’s currently documented fair housing goals:

- Going beyond the required minimum share of project housing units that are committed to being affordable;
- Going beyond the regulated minimum share of project housing units that meet housing accessibility standards;
- Providing “visitability” for housing units not required to be fully accessible;
- Developing at a site that is well located in relation to commercial services and job accessibility;
- Developing at a location close to good public transportation; and
- Going beyond legal obligation to avoid any possible discriminatory impacts on “protected classes.”

¹ Page 6 of “Conciliation Agreement...between Supporters of Engine 6...and...City of Newton ...,” 5/12/2015.

None of those actions are obliged by current law or regulation, but each of them would be supportive of fair housing through goals cited in the *Consolidated Plan* and/or documents that that *Plan* cites, and all but one of them (“visitability”) has been provided in one or more recently approved developments in Newton.

AFFORDABILITY

Is the project planned for more units priced below-market than is required by law?

- 0. No, the number of below-market units will equal that required
- 1. Yes, but fewer than twice the required number of units will be below market
- 2. Yes, at least twice as many units as required but not all will be priced below market
- 3. Yes, all of the units will be below market.

ACCESSIBILITY

Is the development planned for more units meeting accessibility rules than are required by State or federal regulation?

- 0. No, the number will be that which is required, if any.
- 1. Yes, but fewer than twice the required percentage will be accessible;
- 2. Yes, and at least twice the required percentage will be accessible;
- 3. Yes, 100% of the units will be accessible.

VISITABILITY

A “visitable home” as noted in the Newton *FY11-15 Analysis of Impediments to Fair Housing Choice* must have “(1) at least one entrance is at grade (no step), approached by an accessible route, such as a sidewalk; (2) that entrance door and all interior doors on the first floor are at least 34 inches wide, offering 32 inches of clear passage space; and (3) at least one half-bath is on the main floor.”

To what extent do the dwelling units in the proposed development meet that description of what is called “visitability?”

- 0. No dwelling units meet all three criteria
- 1. A few housing units meet all three criteria
- 2. Most housing units meet all three criteria, or all meet most of them
- 3. All housing units meet all three criteria.

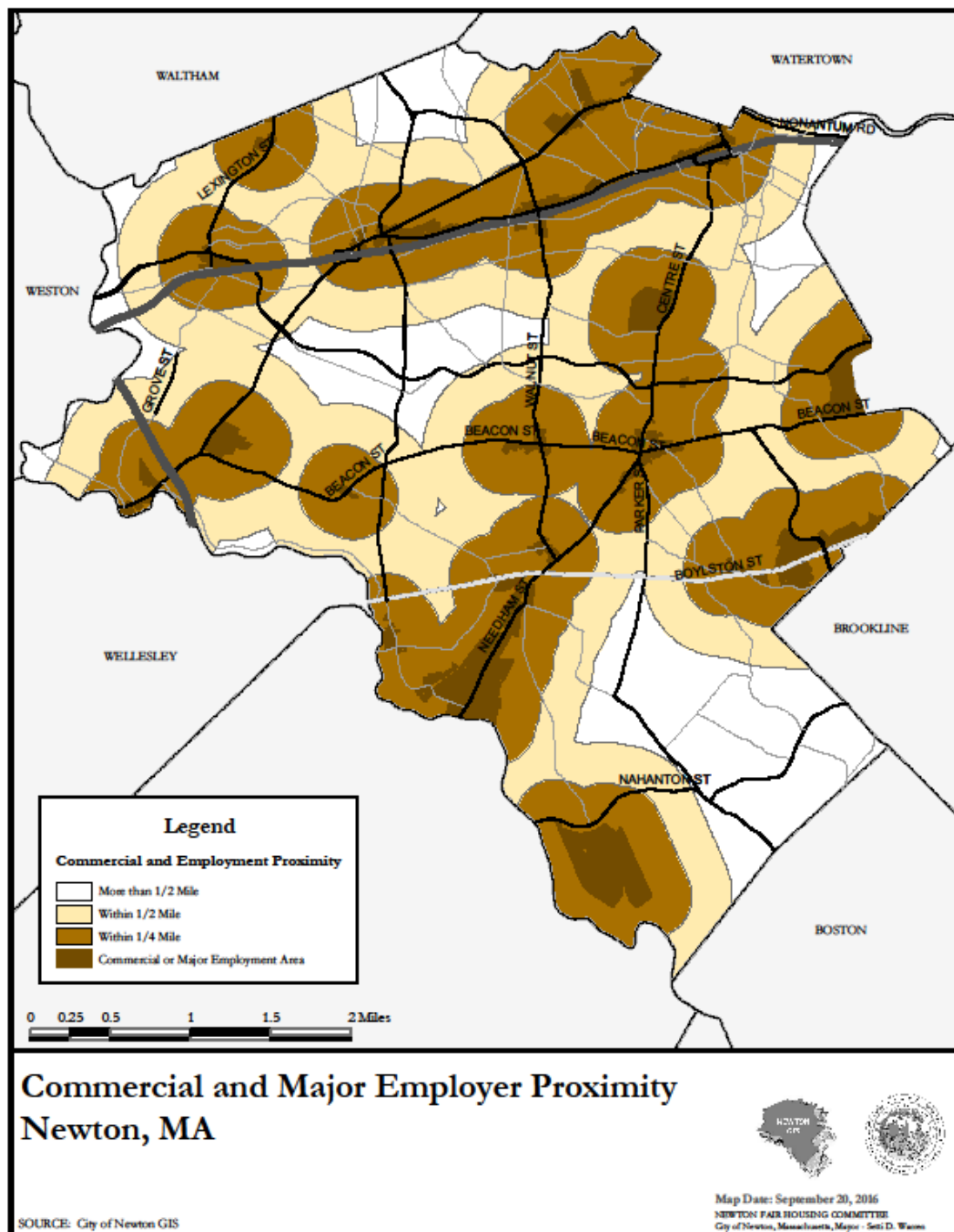
HOUSING/EMPLOYMENT/TRANSPORTATION PROXIMITIES

Newton’s *FY 11–15 Analysis of Impediments to Fair Housing Choice* speaks highly of how many locations in Newton benefit from their proximity to employment opportunities, commercial services, community services, and proximity to public transportation for access to such assets that may be beyond walking distance. Some locations within the City are far richer than others regarding those opportunities and services, and locations within the City differ in proximity to and frequency of service of public transportation than are others. It is important for affirmatively furthering fair housing that sites of affordable housing be served no less well than other sites in those two regards. The following two maps enable evaluating how well a proposed housing development serves that consideration as expressed in the *Analysis of Impediments*.

Proximity to commercial or major employment

How close is the housing site's proximity to commercial activity and employment as shown by City data on the map below?

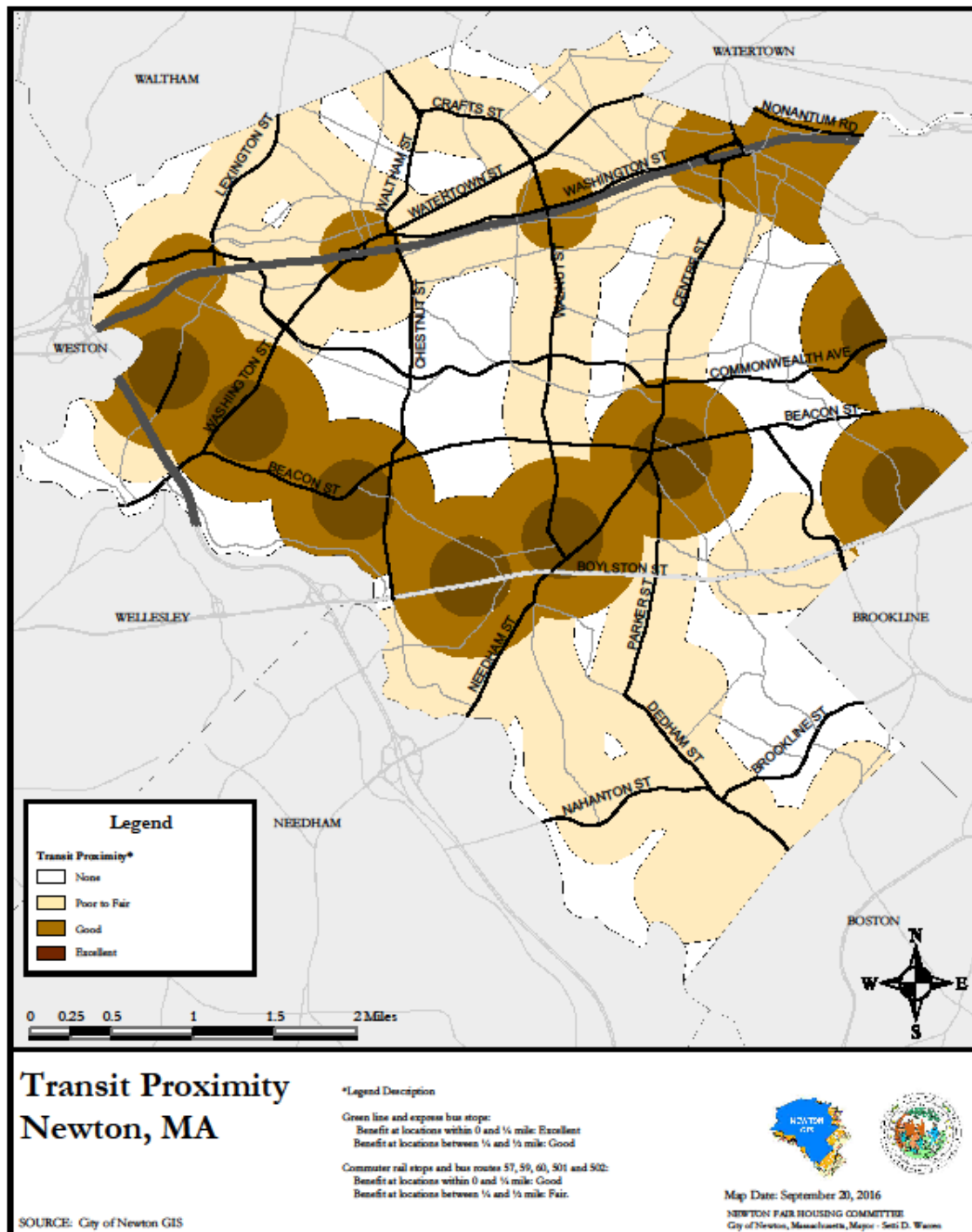
0. More than 1/2 mile from such a site
1. Within 1/2 mile of such a site
2. Within 1/4 mile of such a site
3. Within or adjacent to a commercial or major employment site



Proximity to good public transportation

How good is the site's transit proximity as City-defined?

- 0 - None
- 1 - Poor, Fair
- 2 - Good, Very good
- 3 - Excellent, Superior



Discretionary Impacts

(A) Would the proposed development be free of disparate negative impacts for “protected classes” based on race, national origin, color, religion, sex, familial status, or disability, even though no regulation might be violated? For example,

- A sizable development that contains only one-bedroom and studio apartments could be seen as having disparate impact on families with children under 18, or
- A proposed townhouse development having no units that have first-floor bedrooms and bathrooms could be seen as having a disparate impact on persons having a disability; or
- A housing proposal might be proposed at a site at which accessibility would be disparately poor for some.

(B) Might the City’s approval of the development be seen as creating, increasing, reinforcing, or perpetuating segregated housing patterns based on protected class status?

(C) In either such case, what is the justification provided for that proposal? Is the justification supported by the facts? Is the proposal necessary to achieve a “substantial, legitimate, nondiscriminatory interest”? If so, can that interest be served by modification of or an alternative for the proposal which has less discriminatory effect?

These are the potential findings:

0. Whether or not in compliance with all regulations, the proposed development would have disparate impact on a protected class, as illustrated at (A) above, and/or it would perpetuate segregated housing patterns, and there is no feasible means of lessening impact through modification or an alternative.

1. Whether or not in compliance with all regulations, the proposed development would have a disparate impact on a protected class, as illustrated at (A) above, and/or it would perpetuate segregated housing patterns, but the impact could possibly be lessened through major modification or an alternative.

2. Whether or not in compliance with all regulations, the proposed development would have a disparate impact on a protected class, as illustrated at (A) above, and/or it would perpetuate segregated housing patterns, but the impact could possibly be lessened through small revisions or minor alteration.

3. The proposed development appears to have no disparate impact on any protected class, nor does it perpetuate segregated housing patterns.

SOURCES FOR RELEVANT CONSOLIDATED PLAN OBJECTIVES

Affordability

FY 16-20 Consolidated Plan

Page 112: "...this Consolidated Plan puts the need for affordable housing at the top of the priority list..."

Page 113: SP-25 Priority needs table, row 2, "Provide affordable housing in mixed income developments."

Page 113: SP-25 Priority needs table, row 4, "Increase production of new affordable housing units."

Page 132: SP-45 Strategic Goals table, row 1, "Increase production of new affordable ... units."

FY11-15 Analysis of Impediments to Fair Housing Choice,

Page 16: "providing incentives to developers to exceed the mandated amount of inclusionary zoning."

Accessibility

FY 16-20 Consolidated Plan

Page 113: SP-25 Priority needs table, row 3, "Additional accessible rental units ..."

Page 132: SP-45 Strategic Goals table, row 1, "Increase production of new ... accessible ... units."

Visitability

FY 16-20 Consolidated Plan

Page 113: SP-25 Priority needs table, row 3, "Additional ... visitable housing"

FY11-15 Analysis of Impediments to Fair Housing Choice,

Pages 26 - 27: "Visitability in Housing" discussion at length.

Proximity to commercial or major employment

FY11-15 Analysis of Impediments to Fair Housing Choice,

Pages 21-25: "Employment- Housing – Transportation" discussion at length.

Proximity to good public transportation

FY11-15 Analysis of Impediments to Fair Housing Choice,

Pages 21 – 25 as above, especially page 23: Proximity to Transit Legend Description.

Discriminatory impacts

FY11-15 Analysis of Impediments to Fair Housing Choice,

Pages 12 – 13, "B. 2002 Analysis of Impediments to Fair Housing Choice Update.